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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,324	01/20/2004	Brett Lickle	LKL-100	9784

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MCCARTER & ENGLISH, LLP  
BASIL S. KRIKELIS  
CITIZENS BANK CENTER, 919 N. MARKET STREET  
SUITE 1800  
WILMINGTON, DE 19801

EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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05/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/760,324	<b>Applicant(s)</b> LICKLE, BRETT	
	<b>Examiner</b> Tam Nguyen	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-14 and 16-19 is/are pending in the application.  
4a) Of the above claim(s) 1-5 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

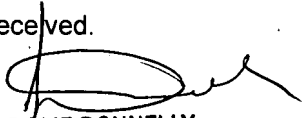
### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6-30-04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME DONNELLY  
PRIMARY EXAMINER

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-19-04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claim 15 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 11, 2007.

### *Drawings*

2. The amended drawings were received on January 11, 2007. These drawings are acceptable.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "textured coating" of the concave region and the insert of claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Information Disclosure Statement***

4. Since the applicant has attempted in good faith to provide an adequate copy of the non-patent literature cited in the IDS dated July 19, 2004, the "Indoboard advertisement" reference is being considered by the examiner.

***Claim Rejections - 35 USC § 112***

5. Claims 6-14 and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1 and 16 in particular, the phrase "wherein the upper surface is adapted to permit the user to distribute the user's weight to any position on the upper surface" was not described in the specification.

Claims 7-14 and 17-19 are rejected for being dependent on a rejected base claim.

6. Claims 6-14 and 16-19 are also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 16 in particular, the phrase "wherein the upper surface is adapted to permit the user to distribute the user's weight to any position on the upper surface" is indefinite since it is

unclear how the scope of that language reads on the embodiment of Fig. 1C, since it would appear to be impossible for a user to stand on "any position on the upper surface" when the ends of the upper surface appear to be almost vertical. Claims 7-14 and 17-19 are rejected for being dependent on a rejected base claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 7, 9 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Armer, Jr. (4,191,371).

7. As to claim 6, 7, 9 and 16, Armer, Jr. discloses a balance training device and inherently a method for exercising as substantially claimed, the device comprising a board (14) and a single substantially spherical balancing insert (12) wherein the board comprises an upper surface (24) and a lower surface (22) having a circularly shaped concave region extending into the board below the upper surface with the concave region adapted to receive the balance insert to allow the board to ride over the insert such that the upper surface is adapted to permit a user to distribute his weight to any position on the upper surface and the concave region encompasses an area: larger than an area defined by the circumference of the insert and between 15%-95% of the lower surface (see Figs. 1-4 & Col. 2, lines 17-21).

Claims 6 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by England (3,862,768).

8. As to claims 6 and 12, England discloses a balance trainer as substantially claimed. England further discloses that the insert and the concave region each comprise a texture (19) or texturizing coating (20) that are compatible with each other (see Figs. 3 & 6 and Col. 4, lines 47-59).

Claims 6 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall, Jr. (5,415,589).

9. As to claim 6 and 13, Hall discloses a balance training device comprising a board (14) inherently having a left side and a right side, a single substantially spherical balancing insert (20) disposed next to a swivel bearing (21) on the left side of the board and a platform having a concave top surface (16) and a substantially flat bottom surface (12) wherein the board comprises an upper surface and a lower surface (18) having a concave region extending into the board below the upper surface with the concave region adapted to receive the balance insert to allow the board to ride over the insert such that the upper surface is adapted to permit a user to distribute his weight to any position on the upper surface and the insert rides on the top surface of the platform (see Fig. 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. 371 in view of Sasser, Jr. (3,488,049).

10. As to claims 8 and 10, Armer discloses a balance trainer as substantially claimed (see discussion of claim 6). Armer does not disclose that board includes a concave region with a substantially oval or rectangular shape. Sasser discloses a similar trainer having a board (20) having a concave region (30) with a substantially oval/oblong or rectangular shape (see Figs. 1, 2, 4 & 6 and Col. 1, lines 64-69). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the shape of Armer's concave region into any of an array of shapes including that of an oval or rectangle as long as the insert is still able to rotate in all directions and the shape provides an adequate stop to prevent the platform from disengaging from the spherical fulcrum insert. A change in the shape of a prior art device is a design consideration within the skill on the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coplin et al. (3,024,021) in view of Armer, Jr. '371.

11. As to claims 6 and 11, Coplin et al. disclose a balance device comprising a board (10) and a single substantially spherical balancing insert (8) wherein the board comprises an upper surface with a securing device (16) and a lower surface having a concave region extending into the board below the upper surface with the concave region adapted to receive the balance insert to allow the board to ride over the insert such that the upper surface is adapted to permit a user to distribute his weight to any

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position on the upper surface (see Fig. 2). Coplin does not disclose that the concave region encompasses an area larger than an area defined by the circumference of the insert. Armer discloses a similar balance device having a concave region (22) that encompasses an area larger than an area defined by the circumference of an insert (12) (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to enlarge Coplin's concave region to provide a user with a more challenging balance exercise device.

Claims 14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over England '768 in view of Sasser, Jr. '049.

12. As to claims 14 and 17, England discloses a balance trainer as substantially claimed (see discussion of claims 6 and 16). England does not disclose that the trainer further comprises a platform having a concave top surface and a substantially flat bottom surface wherein the balance insert rides on said top surface. Sasser discloses a similar trainer having a platform (42) having a concave top surface (62) and a substantially flat bottom surface (54) wherein a balance insert (34) rides on said top surface (see Figs. 3-6). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Sasser's platform with England's board and insert to allow a user to ride the board over the insert in multiple directions but within a fixed area defined by the concave top surface when overall floor space for the trainer is limited.

13. As to claims 18 and 19, England discloses a balance trainer as substantially claimed (see discussion of claim 16). Sasser inherently discloses the step of providing



a plurality of boards having different concave regions (44,62) to change the degree of difficulty of the exercise by sequentially choosing boards that gradually increase the size of the concave region (see Figs. 3 & 5).

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 6, 10, 13, 14 and 16-19 have been considered but are moot in view of the new ground(s) of rejection.

15. Applicant's arguments filed January 11, 2007 have been fully considered but they are not persuasive. Regarding claims 6 and 13, applicant's argument that Hall '589 does not disclose a device comprising a single spherical insert has been considered, but Hall clearly discloses a single insert on one side of the swivel bearing at a given distance therefrom. Hall also discloses another single insert on the same side of the swivel bearing at a second distance therefrom amongst other single inserts. It appears that applicant should claim --only one insert-- to clarify the subject matter. Regarding claim 6, Armer clearly discloses an upper surface (24) that permits the user to distribute his weight to any position on the upper surface. Note, the upper surface does not include the area labeled (20).

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor can be reached on 571-272-4715. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 11, 2007

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Tam M. Nguyen  
Examiner  
Art Unit 3764

JEROME DONNELLY  
PRIMARY EXAMINER

